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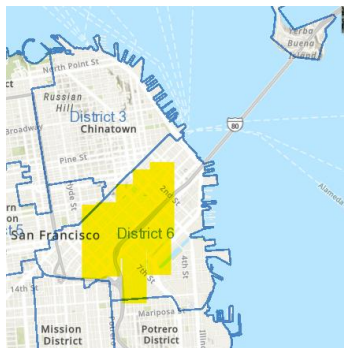
**Legislative Review:** BOS File #220340 – Planning Code – Neighborhood Commercial and Mixed Use Zoning Districts

**Name:** Dorsey

**Date Introduced:** 11/8/2022

**Date Referred:** 11/17/2022

**Scheduled for BOS Committee:** Land Use and Transportation Committee



**Legislative Overview:** This legislation would 1) extend major components of Proposition H (adopted by voters in November 2020) to Eastern Neighborhoods Zoning Districts and 2) reorganize the Eastern Neighborhoods Mixed Use Zoning District's tables and use definitions through the following changes:

**Aligns the Eastern Neighborhood Zoning Districts with Proposition H provisions available to other Neighborhood Commercial Districts in the City**

- Removes 311 notification (neighborhood notification) requirement for principally permitted uses in Eastern, Western, and Central SoMa Area Plan.
- Changes of use in the Eastern SoMa Area Plan would be eligible for the 30-day permit process created by Prop H.
- In WMUG, WMUO, SALI, and RED-MX Districts, Outdoor Activity Areas located in the rear yard would be principally permitted, so long as they met the criteria outlined in Prop H. The criteria are:
  - a) The Outdoor Activity Area is located on the ground level;
  - b) The Outdoor Activity Area is in operation only between 9:00 a.m. and 10:00 p.m.;
  - c) The Outdoor Activity Area is not operated in association with a Bar use;
  - d) Where associated with a Limited Restaurant or Restaurant Use, the Outdoor Activity Area includes only seated, not standing, areas for patrons; and
  - e) Alcohol is dispensed to patrons only inside the premises or through wait staff services at the patron's outdoor seat in the Outdoor Activity Area.

- **Expands Accessory Uses:**
  - Accessory production, wholesaling, and processing of goods within a retail space would be allowed to occupy more than one-third of the total space, so long as active retail use is in the space. This change would result in standardization across the City of how Accessory Uses are defined.
  - Limited Live Performances would be permitted in certain parts of Eastern Neighborhoods Mixed Use Zoning (MUG, MUR, RED-MX).
  - Catering would be permitted as an accessory use within Restaurants (where food + alcohol are served, with seating) and Limited Restaurants (where food is served, with or without seating, with beer/wine for sale to go only) in Commercial, Manufacturing, and Production Distribution and Repair (PDR) districts. This change would result in standardization across the City with regards to Catering as an Accessory Use.
- **Streamline permitting requirements to support Arts Activities**
  - Principally permits arts activities in more Eastern Neighborhoods Mixed Use Districts
    - Residential Enclave District (RED) will require Conditional Use for Arts Activities
    - Live theater will not be permitted in RED, RED-MX, and South Park District
  - Removes a separate set of good neighbor policies exist for Nighttime Entertainment uses in Eastern Neighborhoods Mixed-Use districts. Instead, the Entertainment Commission's Good Neighbor Policies will apply.
- **Simplify permitting requirements to support Nighttime and General Entertainment**
  - Remove restrictions for Nighttime Entertainment and Animal Services in the Western SoMa Special Use District.
  - In the Regional Commercial District, principally permit Nighttime and General Entertainment on the 1<sup>st</sup> and 2<sup>nd</sup> floor, and prohibit them on the 3<sup>rd</sup> floor and above.
  - Principally permit Nighttime Entertainment in MUG, WUO, WMUG, South Beach, Rincon Hill DTR Districts, and on 1<sup>st</sup> and 2<sup>nd</sup> floor of Folsom St. NCD
  - Allow Nighttime and General Entertainment permitted with a Conditional Use Authorization in SOMA NCT, South Park District
  - Allow Nighttime Entertainment permitted with a Conditional Use Authorization outside the Central SoMa SUD within the MUR zoning district.
  - Principally permit General Entertainment in MUG, WMUR, and WMUG Districts.
  - Principally permit bars on the second floor of Folsom NCT and RCD Districts.
- **Streamline a variety of institutional uses (job training, social services, private community facilities).**
- **Make changes to automobile uses pertaining to public parking lots, garage, automotive sales/rentals.**
- **Allow for activation of limited commercial uses.**
- **Make changes to current definition of 'walk up facility.'**

**Legislative Intent:**

Since 2013, the City has sought to simplify and reorganize planning code to make it easier to understand. This phase of reorganization focuses on the Eastern Neighborhood Mixed Use Districts, aligning zoning and permitting uses to better match zoning tables to other Neighborhood Commercial District tables.

It also aligns components of Prop H, which relaxed planning provisions in Neighborhood Commercial Districts, with the Eastern Neighborhood Mixed Use Districts by 1) the removal of the 311 Notification (aka neighborhood notification) for principally permitted uses and 2) allowing outdoor activity areas as of right in the rear yard under certain circumstances.

### **Background – Proposition H**

Proposition H was passed by voters in November of 2020 and relaxed several Planning Code provisions for the City’s Neighborhood Commercial Districts. It allowed for greater flexibility within commercial districts, and sought to shorten the permitting timeline for new businesses.

### **Prop H Summary:**

- Neighborhood Notification: Eliminated neighborhood notification for principally permitted uses in Neighborhood Commercial (NC) Districts, Limited Commercial Uses (LCUs) and Limited Corner Commercial Uses (LCCUs). These change of use permits will now be able to be approved over-the-counter.
- Permitted Uses: All Neighborhood Commercial District Zoning tables, except for the Mission Street NCT, 24th Street-Mission NCT, and SOMA NCT, have been updated to allow for more principally permitted and conditionally permitted uses.
  - o Arts Activities and Social Service or Philanthropic Facilities are now principally permitted on all floors. §
  - o Non-Retail Sales and Services (e.g. office space) are principally permitted on upper floors and permitted with a conditional use authorization on the ground floor.
  - o General Entertainment, Movie Theaters, Community Facilities, Restaurants, Limited Restaurants, Animal Hospitals, and Retail Professional Services (e.g. realtors, accountants, insurance agents) are now principally permitted where currently permitted with a conditional use authorization, and conditionally permitted where currently not permitted. Restaurant controls were not amended in North Beach.
- Temporary Uses: Allowed temporary retail uses in bars and entertainment venues for up to six years without abandoning the original use; Allows 60-day “pop-up” retail in vacant commercial storefronts in addition to occupied commercial storefronts.
- Limited Commercial Uses and Limited Corner Commercial Uses: Limited Commercial Uses in RH, RTO and RM districts are only regulated by the controls in NC-1. Before, these uses were regulated by NC-1 district controls or a more restrictive NC District if it was within a certain proximity.
- Outdoor Activity Areas: Eliminated the CU requirement for Outdoor Activity Areas (e.g. back patios for restaurants) in NC Districts so long as the space is used only between 9 am and 10 pm, the use is not Bar, and if it’s a Restaurant Use where customers are seated at tables. Should a business want to exceed these limits it could seek CU authorization to do so.

- Retail Workspace: Created a new Use called Retail Workspace, which requires that an eating or drinking use occupy the front 1/3 of the retail space while the back 2/3rds may be used as a co-working space where desks can be rented by the hour; Expands the definitions of Accessory Use in NC Districts to allow Eating and Drinking Uses to have a Retail Workspace as an Accessory Uses with limits on the hours of operation, but not on floor area.
- Expanded Definitions: Expanded the definition of a Social Service or Philanthropic Facility (aka Non-profits) to allow for associated on-site office use; Expands the definition of a Bona Fide Eating Place to include a per occupant rate for the food sales requirement in addition to the traditional, majority of gross sales requirement.

This legislation extends many of these same provisions to the Eastern Neighborhood Mixed Use Districts, which were not part of Prop H.

### **Definitions:**

**Accessory use:** A related minor Use that is either necessary to the operation or enjoyment of a lawful Principal Use or Conditional Use, or appropriate, incidental, and subordinate to any such use, and is located on the same lot.

**Arts Activities:** A retail Entertainment, Arts and Recreation Use that includes performance, exhibition (except exhibition of films), rehearsal, production, post-production and some schools of any of the following: dance; music; dramatic art; film; video; graphic art; painting; drawing; sculpture; small-scale glassworks; ceramics; textiles; woodworking; photography; custom-made jewelry or apparel; and other visual, performance, and sound arts and craft.

**General Entertainment:** A Retail Entertainment, Arts and Recreation Use that provides entertainment or leisure pursuits to the general public including dramatic and musical performances where alcohol is not served during performances, arcades that provide eleven or more amusement game devices (such as video games, pinball machines, or other such similar mechanical and electronic amusement devices), billiard halls, bowling alleys, skating rinks, and mini-golf, when conducted within a completely enclosed building, and which is adequately soundproofed or insulated so as to confine incidental noise to the premises

**Limited Live Performance:** Live Performances as a secondary purpose of a locale rather than its primary purpose. The locale is indoors, or consists of an outdoor plaza, courtyard, or similar space, enclosed by surrounding buildings. Live Performances must conclude by 11 p.m.

**Nighttime Entertainment:** A Retail Entertainment, Arts and Recreation Use that includes dance halls, discotheques, nightclubs, private clubs, and other similar evening-oriented entertainment activities which require dance hall keeper police permits or Place of Entertainment police permits, as defined in Section 1060 of the Police Code, which are not limited to non-amplified live entertainment, including Restaurants and Bars which present such activities, but shall not include any Arts Activity, any theater performance space which does not serve alcoholic beverages during performances

**Outdoor activity area:** A Commercial Use characteristic defined as an area associated with a legally established use, not including primary circulation space or any public street, located outside of a building or in a courtyard, which is provided for the use or convenience of patrons of a commercial establishment including, but not limited to, sitting, eating, drinking, dancing, and food-service activities.

### **Considerations**

- Who benefits from or will be burdened by your proposal (geographically, ethnically, linguistically)? What are your strategies for advancing racial equity or mitigating unintended consequences?
- What was the development process of this proposal? Whose input have you sought out? What feedback did you hear and did you incorporate it into this proposal? If not, why not?
- Is this proposal punitive or enforcement based? What are the other alternatives for proactive compliance?
- Given the diversity of San Francisco, how would this policy play out in different cultural settings? How does it accommodate cultural norms?